

2003

Pinnacle Highland v. Mitch Tomlinson : Brief of Appellee

Utah Court of Appeals

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Mitch Tomlinson; Pro Se.

Kirk A. Cullimore; Attorneys for Plaintiff and Appellee.

Recommended Citation

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IN THE COURT OF APPEALS

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PINNACLE HIGHLAND,)	
	(
Plaintiff and Appellee,)	Case Nos. 20030386-CA
	(020403375-CV
)	
	(
MITCH TOMLINSON,)	
	(Priority No.
Defendant and Appellant.)	
	(
)	

BRIEF OF APPELLEE

Appeal from the Order to Enforce Settlement
of the Third Judicial District Court, County of Salt Lake,
Sandy Department, State of Utah
by the Honorable Michael Burton

Defendant and Appellant
Mitch Tomlinson, *pro se*
416 E. Scott Ave. #D
Salt Lake City, Utah 84115

Attorneys for Plaintiff and
Appellee
Law Offices of Kirk A.
Cullimore, P.C.
Kirk A. Cullimore, #3640
Lisa M. McGarry, #5311
644 East Union Square
Sandy, Utah 84070

Published Opinion Requested

FILED
UTAH APPELLATE COURTS
AUG 16 2004

IN THE COURT OF APPEALS

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	(
Plaintiff and Appellee,)	Case Nos. 20030386-CA
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IN THE UTAH COURT OF APPEALS

)	
PINNACLE HIGHLAND,)	BRIEF OF APPELLEE
Plaintiff/Appellee,)	
vs.)	Case Nos. 20030386-CA
		020403375-CV
MITCH TOMLINSON,)	
Defendant/Appellant.)	Priority No.

PRELIMINARY STATEMENT

Appellant's ("Tomlinson") standards for review are incorrect. Specifically, Tomlinson treats the motion hearing as if it were a trial, thereby requiring trial procedures, including witness testimony and findings of facts and conclusions of law. Yet the hearing which is the subject of this appeal was not a trial or evidentiary hearing. It was a hearing held as a result of Appellee's (Pinnacle's) Motion to Enforce the Settlement Agreement. (R. at 85-91.) This Settlement Agreement contained a provision allowing for a Confession of Judgment to be entered if Tomlinson violated any terms of the Agreement. He did. He failed to vacate the premises within the time period allowed and also did not make his monthly payments. (T. at 22-25.)

Although it is true that the hearing was designated as an ``evidentiary'' hearing by the clerk, the court docket is clear that the hearing was set as result of the Motion to Enforce the Settlement Agreement. (Addendum ``A.'') As this court is aware, district court clerks only have certain designations which they can enter into the computerized docket. No ``motion to enforce'' exists. As a result, the clerk entered the wrong designation. In any event, Pinnacle filed a Motion to Enforce the Settlement and corresponding Supportive Memorandum, Affidavit, and Notice of Hearing on October 22, 2002. On October 23, 2002 the clerk set the hearing on the ``Motion to Enforce Settlement'' for November 8, 2002; however, Tomlinson requested a continuance. At the hearing held on November 8, the district court granted the continuance to ``allow defendant to respond and to retain counsel.'' (R. at 85-104; Docket, Addendum ``A.'') The court did not continue it for the purpose of allowing Tomlinson to assemble witnesses. In fact, the hearing was continued again two more times, as the request of Tomlinson, until the matter was finally held on March 28, 2003. (R. at 105; transcript.)

The transcript of the motion hearing shows that the court went to great lengths to determine the issues. The court concluded that the validity of the Stipulation was in question. The court actively sought testimony from both parties and proffer from their respective counsel. Tomlinson, as well as his counsel, both took numerous

opportunities to address the court. The hearing resulted in judgment against Tomlinson as a result of the terms of the Stipulation. (T. at 3-28.)

The witnesses assembled by Tomlinson were not called, presumably because the issue of the Stipulation remained the sole issue for purposes of the hearing. Neither Tomlinson nor his attorney ever asked to call the witnesses. (T. at 3-28.) The judgment confirms that the court focused on only the validity of the Stipulation, since the court entered judgment only as to the amount noted in the Stipulation. This amount did NOT contain any sums for cleaning and damages. (T. at 28; R. at 105.) Thus, the testimony of the witnesses was irrelevant.

Tomlinson relies on the ``clearly erroneous'' standard of Rule 52(a), Utah Rules of Civil Procedure, to assert that the court erred in not making specific findings of facts and conclusions of law. Since the hearing resulted from a motion, and not from a trial, rule 52(a) does not apply. The rule specifically excludes motions. The docket confirms that the court considered the matter to be set for a motion with the following language: ``The Court GRANTS motion to enforce settlement agreement. Judgment to be entered in the amount of \$1332.52. Plaintiff to submit judgment.'' (Addendum ``A;'' Docket.)

Assuming, *arguendo*, that the hearing really was set as an evidentiary hearing, the district court complied with rule 52(a). It made findings at the conclusion of the

hearing, because Rule 52(a) allows such findings to made orally. Rule 52(a), Utah Rules of Civil Procedure.

STATEMENT OF JURISDICTION

According to Utah Code Ann. § 78-2-2(4)(e), the Court of Appeals may hear any matter, with certain exceptions, transferred by the Utah Supreme Court. The issues surrounding the appeal do not qualify as one of these exceptions.

STATEMENT OF THE ISSUES

1. Does the ``clearly erroneous'' standard of Rule 52(a) apply to motions, including motions to enforce settlement agreements?

2. Did the district court review sufficient evidence to support the judgment in the amount of one thousand three hundred and thirty-two dollars and fifty-two cents?

STANDARD OF REVIEW

The standard of review for both issues is the ``clearly erroneous'' standard established by Rule 52, Utah Rules of Civil Procedure. Rule 52(a), Utah Rules of Civil Procedure. In considering whether findings of fact and conclusions of law are necessary for decisions based upon motions, Utah appellate courts have stated that under Rule 52(a), failure to state grounds for the court's decision does not constitute reversible error, but only remand. Neerings v. Utah State Bar, 817 P.2d 320, 323 (Utah 1991.)

STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS

Rules 52(a), Utah Rules of Civil Procedure, 52(a), Federal Rules of Civil Procedure, 401, Utah Rules of Evidence, 402, Utah Rules of Evidence, and 602, Utah Rules of Evidence.

STATEMENT OF THE CASE

I. Nature of the Case:

This case arises from an unlawful detainer action based upon Tomlinson's alleged behavior constituting a nuisance. (R. at 1-10). At a summary judgment hearing held on the matter, Tomlinson and Pinnacle entered into settlement negotiations, resulting in a stipulation signed by both parties. (R. at 15- 25.) PINNACLE contends that Tomlinson breached the stipulation by, among other actions, failing to vacate the premises by a certain date and refusing to make the first monthly payment to PINNACLE for outstanding rent, late fees, attorney's fees, and court costs. (R. at 22-25; T. at 2-3, 22-24.) Tomlinson subsequently disputed that this stipulation, filed with the court, constituted the original stipulation that he signed. (R. at 73-84; T. at 14-18.) Tomlinson filed several motions, including a motion to set aside the judgment, which the court granted. Pinnacle then sought an Order from the court, seeking enforcement of the stipulation. The court held a hearing on the motion, and granted the motion. (R. at 44-84.)

II. Course of the Proceedings:

This appeal arises from a final judgment of the Third District court. (R. at 105.) On March 28, 2003, Judge Michael Burton conducted a hearing on PINNACLE's motion to enforce the settlement agreement. He was asked to review the Stipulation previously filed with the court to determine whether it was actually the document signed by Tomlinson. Tomlinson's attorney confirmed that this review was the purpose of the hearing. (T. at 3.) Judge Burton heard testimony from the parties and from one of Pinnacle's witnesses, an attorney who negotiated the settlement with Tomlinson. (T. at 3-28.)

III. Disposition in the Trial Court:

The court first clarified the issue set for the hearing. Both parties agreed that the purpose of the hearing centered on the validity of the stipulation. (T. at 3, 6-7.) The court then heard testimony from both parties, proffers from their respective counsel, and testimony from the attorney who negotiated the settlement with Tomlinson. Judge Burton concluded that the stipulation filed with the court was indeed the original document signed by the parties, resulting in Tomlinson's obligation to pay the amount noted in the stipulation, less a security deposit in the amount of \$970.00, resulting in a judgment for \$1,342.52. (T. at 3-28.)

IV. Statement of the Facts:

Pinnacle served Tomlinson with a Three Day Notice to Vacate based upon a nuisance. (R. at 4.) Pinnacle stated in the Notice that the nuisance consisted of Tomlinson's ``violent, abusive, and threatening behavior towards the management staff.'' (sic.) Tomlinson failed to vacate, so Pinnacle served him with a Summons and Complaint. (R. at 13-14.) The Summons, in accordance with Utah Code Ann. §78-36-1 *et seq.*, allowed Tomlinson to respond within the shortened time period of three days. (R. at 1, 13-14.) Tomlinson answered the complaint and included a ``cross complaint.'' (R. at 11-12.) Pinnacle determined that despite Tomlinson's assertions in his answer, no material issues were in dispute, based upon ample documentation in the file, so Pinnacle filed a Motion for Summary Judgment and Request for Oral Argument. Before the hearing began on April 26, 2002, the parties negotiated a settlement agreement. The relevant terms of the stipulation outlined that Tomlinson was to vacate on or before May 10, 2002. (R. at 22-25.) He also agreed to pay \$2,312.52 to Pinnacle, by tendering monthly payments to Pinnacle's attorney in the amount of \$150.00, beginning June 15, 2002, until paid in full. If Tomlinson failed to comply with these any of these terms, Pinnacle would enter his confession of judgment for a much greater sum resulting from statutory treble damages. (R. at 22-25.)

Tomlinson did not vacate by May 10, 2002, so Pinnacle filed the Stipulation with the court, along with an

Affidavit of Breach of the Agreement, a Certification of Judgment, and a Motion and order for restitution of the premises. (R. at 26-30.) The court entered judgment in the amount of \$6,975.25, based upon the Confession of Judgment, on May 23, 2002. (R. at 31.) Tomlinson filed Motions to Set Aside the Stipulation, to Set Aside the Default Judgment, and for Support of Motion for Relief from Order. (R. at 44-57, 73-84.) Contrary to Tomlinson's clear violations of the terms of the Stipulation and to the facts outlined in Pinnacle's responsive memorandum, the Court set aside the judgment. (R. at 58-65, Docket, Addendum ``A.'')

Almost immediately, Pinnacle filed a Motion to Enforce the Settlement. (R. at 85-91.) Instead of responding to the Motion, Tomlinson moved for extensions of time. (R. at 94-100.) The district court granted Tomlinson's request, stating that hearing on the *Motion to Enforce the Settlement* would be continued to ``allow defendant to respond and retain counsel.'' (Docket, Addendum ``A.'') The Court recognized that the hearing was on a *motion*, not on an evidentiary hearing, as alleged by Tomlinson. (Docket).

At the time of the hearing on the motion, a visiting judge continued the hearing again, yet curiously, the docket reflects that the name of the hearing was changed to an evidentiary hearing. (Docket, R. at 101-104.) Finally, the court heard that matter on March 28, 2003. The court clarified that the issue was the validity of the stipulation, heard both testimony from the parties and

proffers from their respective counsel, elicited testimony from Pinnacle's witness, an attorney who negotiated the settlement terms, and found that the stipulation was indeed valid. (entire transcript.)

SUMMARY OF THE ARGUMENT

Tomlinson entered into a binding stipulation with Pinnacle. Part of the terms of the stipulation included that Tomlinson was to vacate by a certain date and to make monthly payments to Pinnacle as consideration for Pinnacle's settlement of the case. If Tomlinson failed to comply with these terms, Pinnacle could file the corresponding Confession of Judgment. Tomlinson breached the agreement by failing to vacate by the date specified and by subsequently failing to make the noted payments. (R. at 22-25; T. at 22-24.) Tomlinson then claimed that the first page of the stipulation had been altered and that therefore, the terms of the stipulation were false. Yet in Tomlinson's Amended Memorandum in Support of Motion for Relief from Order and Request for Attorney's Fees, Tomlinson admitted that part of the terms of the Stipulation were undisputed. He stated as follows: "[i]n accordance with the terms of paragraph 2 of the stipulation, Defendant agreed to pay the sum of \$2,312.52 making monthly payments of \$150.00 on or before June 15, 2002 and continuing every month thereafter on the 15th of each month until paid in full." (sic.) (R. at 74.) Presumably, since these terms are noted on the same first page that Tomlinson disputes, the rest of the terms must be

valid as well, including the date Tomlinson agreed to vacate.

Moreover, Tomlinson asserts that the judge did not allow his witnesses to testify as to cleaning and damages. He also claims that because the hearing held on March 28, 2003 was an evidentiary hearing, the court failed to make findings of facts and conclusions of law, in violation of Rule 52(a), Utah Rules of Civil Procedure. First, the hearing was held pursuant to a Motion to Enforce the Settlement Agreement, not for purposes of an evidentiary hearing. Second, Rule 52(a) specifically excludes motions. Third, assuming, *arguendo*, that the hearing was indeed an evidentiary hearing, Judge Burton made sufficient findings and conclusions. Rule 52(a) allows such findings to be made orally, which the court did. Additionally, both parties agreed that the validity of the stipulation was in question. Testimony elicited from Tomlinson's witnesses in regard to cleaning and damages was therefore irrelevant and properly excluded, pursuant to Utah Rules of Evidence, 401, 402, and 602. Finally, a cursory review of the terms of the settlement agreement shows that the amount entered by the district court, \$2,312.52, less that security deposit, EXCLUDED cleaning and damages. Because Tomlinson had not vacated at the time of the parties entered into the stipulation, cleaning and damages could not yet be assessed until Tomlinson left the premises. As a result, the

stipulated amount of \$2,312.52 did not include any cleaning and damages. (T. at 3-28.)

ARGUMENTS

POINT I.

THE ``CLEARLY ERRONEOUS`` STANDARD OF RULE 52(a) DOES NOT APPLY TO MOTIONS, INCLUDING MOTIONS TO ENFORCE SETTLEMENT AGREEMENTS.

Rule 52(a), Utah Rules of Civil Procedure, and Rule 52(a), Federal Rules of Civil Procedure, are virtually identical. Both state:

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58A; Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. . . . It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence. . . .

The state rule continues: `` The trial court need not enter findings of fact and conclusions of law and rulings on motions, except as provided by Rule 41(b). . . . The federal rule reiterates the substance of the above provision by stating that ``[F]indings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this rule.''

The language of these provisions speaks for itself. Utah courts mirror the decisions of the federal courts

wherein they have held that if a motion is decided, the courts need not make specific findings of fact and conclusions of law, with certain exceptions not applicable in the present case. See, Adams v. Kinder-Morgan, Inc., 340 F.3d 1083, 1093 (C.A. Colo. 2003), [no findings necessary for motions to dismiss]; Balzer v. County of Kern, 24 F.3d 244, (9th Cir.1994) [no findings required for motions for reconsideration]; In re Mayhew, 223 B.R. 849, 858 (D.R.I. 1998) [motions to vacate do not necessitate findings]; Johnson v. Botica, 537 F.2d 930, 935 (C.A. Ill. 1976) [findings are not mandatory for motions to dismiss and for summary judgment]; McConnell v. Federal Election Com'n, 253 F. Supp.2d 18, 21 (D.D.C. 2003) [motions to stay do not need findings]; Salt Lake County Com'n v. Salt Lake County Attorney, 985 P.2d 899, 902-903 (Utah 1999) [the court need not enter findings after granting a motion for partial summary judgment]; Shipman v. Evans, 2004 WL 1178243, 8 (Utah), 500 Utah Adv. Rep. 9, 2004 UT 44 [motions to reconsider and dismiss need not be supported by findings]; Taylor v. Taylor, 770 P.2d 163, 168 (Utah Ct. App.1989) and Youakim v. Miller, 562 F.2d 483, 488 (C.A. Ill. 1977) [summary judgments do not require findings].

Tomlinson claims that the issue was set for an evidentiary hearing. As the docket shows, Pinnacle made a request for a hearing on a *motion* to enforce the settlement agreement. It was then noted by the clerk to be an evidentiary hearing. Yet even Tomlinson and his counsel

understood at the hearing held on March 28, 2003, that the only issue to be examined was the validity of the Stipulation. (T. at 3, 6-7.)

POINT II.

THE DISTRICT COURT REVIEWED SUFFICIENT EVIDENCE TO SUPPORT THE JUDGMENT IN THE AMOUNT OF ONE THOUSAND THREE HUNDRED AND THIRTY-TWO DOLLARS AND FIFTY-TWO CENTS.

The trial court spent much time determining first what the issues were at the motion hearing. Judge Burton addressed the validity of the stipulation and determined that the specific issue for the court was to establish whether the attorney for Pinnacle altered the stipulation after Tomlinson signed it. The court heard testimony from this attorney, proffers from counsel, and testimony from Tomlinson. Tomlinson's counsel stated: ``My understanding of the hearing today is just to determine the validity of the stipulation.'' (T. at 3.) He did later claim that the date of vacating and the carpet cleaning were at issue; however, Pinnacle's counsel objected to this characterization of the hearing, asserting that the only issue for the court was the enforcement of the stipulated payment schedule. (T. at 6-7.) Tomlinson supported this position as well: ``We've never really gotten down to a dollar amount because we've been disputing the validity of the stipulation this whole time.'' (T. at 17.) Then Tomlinson's attorney agreed that the issue centered on a dispute as to the amount of the stipulation noted on the front page. (T.at 8.)

As for the court's alleged failure to allow Tomlinson to call witnesses, Tomlinson allowed his counsel to proffer his testimony, so Tomlinson himself did not speak on his own behalf. The court had nothing to do with preventing him from testifying. (T. at 9.) When Tomlinson finally spoke, he claimed that he crossed off and left blank the entire paragraph 2 of the Stipulation wherein the handwritten terms were negotiated. The Court expressed skepticism that Tomlinson would have signed a blank stipulation. (T. at 11, 13-15.)

In regard to the cleaning and damages, the court correctly pointed out that Tomlinson never questioned the security deposit disposition wherein Pinnacle assessed him \$332.00 for carpet damages, keys, and a late fee. (T. at 15.) Tomlinson's attorney then added that the proper amount owing to Pinnacle should have been approximately \$1,312.00, after the security deposit of \$1,085.00 was applied to the original stipulated amount of \$2,312.00. Once again, Tomlinson acknowledged that the amount of the stipulation was \$2,312.00, the amount noted on the front page of the stipulation, which EXCLUDED cleaning and damages. (R. at 22-25; T. at 19.)

The court did not call other witnesses to discuss cleaning and damages because their testimony would have been irrelevant. Everyone at that hearing agreed that only the validity of the stipulation was at question. (T. at 3, 6-7, 17, 22-24.) The court therefore had no basis to call these

witnesses because, according to Utah Rules of Evidence, rule 602, they would have had no ``personal knowledge'' of the terms of the stipulation. Their testimony in regard to this agreement would have been irrelevant, so it would not have

``any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence.'' Their testimony regarding cleaning would have resulted in being inadmissible. Utah Rules of Evidence, Rules 401 and 402.

Even if the hearing held on March 28, 2003 were deemed to be an evidentiary hearing, Tomlinson has to meet the ``clearly erroneous'' standard of Rule 52(a), Utah Rules of Civil Procedure. A cursory review of the entire transcript shows clearly that the court addressed the validity of the stipulation in great detail, asked many questions about the stipulation, allowed the parties and the only witness available to testify as to the terms of the stipulation. (Transcript.) The rule allows courts to make oral findings of facts and conclusions of law. The trial court concluded the hearing as follows:

My view is that this agreement dated the 26th of April was signed in the form that has been presented to me today with Mr. Turner's notes, notations, handwriting on it. So I think Mr. Tomlinson bound himself to pay the \$2,312.52. He gets credits for \$970, which was retained by the plaintiff on the deposit. So I enter judgment--if there's a judgment now, it ought to be amended from today \$1,342.52. . . . It's a judgment entered for failure to comply with the stipulation.

(T. at 28.) This statement by the court is sufficient as findings of fact and conclusions of law. The court explained the facts which led to its decision, and made conclusions about entering the judgment as a result of Tomlinson's failure to comply with the stipulation. (T. at 28.)

While it may be instructive for the trial court to inform the litigants of the legal basis for its decision, we are not persuaded that failure to do so constitutes reversible error. In any event, in the instant case, it appears that the trial court substantially complied with Rule 52(a) by stating that it agreed with the argument and citation of authorities stated in each of the Bar's points in its motion for summary judgment.

Neerings v. Utah State Bar, 817 P.2d 320, 323 (Utah 1991.)

CONCLUSION

The district court properly concluded that the stipulation was valid. The judge did not consider testimony from Tomlinson's witnesses because their evidence would have been irrelevant and inadmissible. The hearing on the matter resulted from a motion to enforce the settlement agreement. Assuming that the hearing was actually an evidentiary hearing, the court still made sufficient oral findings of facts and conclusions of law which were memorialized in the transcript.

RESPECTFULLY SUBMITTED this 13th day of August, 2004.


LISA M. MCGARRY

CERTIFICATE OF MAILING

I certify that I mailed, postage prepaid, a copy of the foregoing Brief of Appellee to the following on this 16th day of August, 2004:

Mitch Tomlinson
416 E. Scott Ave. #D
Salt Lake City, Utah



ADDENDUM “A:”

DOCKET

3RD DISTRICT COURT - SANDY
SALT LAKE COUNTY, STATE OF UTAH

PINNACLE HIGHLAND vs. MITCH TOMLINSON

CASE NUMBER 020403375 Eviction

CURRENT ASSIGNED JUDGE
DENISE P. LINDBERG

PARTIES

Plaintiff - PINNACLE HIGHLAND
Represented by: KIRK A CULLIMOREDefendant - MITCH TOMLINSON
SLC, UT 84115

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	190.00
	Amount Paid:	190.00
	Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: COMPLAINT 0K-2K	
	Amount Due: 37.00
	Amount Paid: 37.00
	Amount Credit: 0.00
	Balance: 0.00

REVENUE DETAIL - TYPE: CROSSCLAIM 2K-10K	
	Amount Due: 60.00
	Amount Paid: 60.00
	Amount Credit: 0.00
	Balance: 0.00

REVENUE DETAIL - TYPE: GARNISHMENT	
	Amount Due: 35.00
	Amount Paid: 35.00
	Amount Credit: 0.00
	Balance: 0.00

REVENUE DETAIL - TYPE: COPY FEE	
	Amount Due: 0.50
	Amount Paid: 0.50
	Amount Credit: 0.00
	Balance: 0.00

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Page 1

CASE NUMBER 020403375 Eviction

REVENUE DETAIL - TYPE: WRIT OF EXECUTION	
	Amount Due: 35.00
	Amount Paid: 35.00

Amount Credit: 0.00
Balance: 0.00

REVENUE DETAIL - TYPE: AUDIO TAPE COPY
Amount Due: 20.00
Amount Paid: 20.00
Amount Credit: 0.00
Balance: 0.00

REVENUE DETAIL - TYPE: COPY FEE
Amount Due: 2.50
Amount Paid: 2.50
Amount Credit: 0.00
Balance: 0.00

CASE NOTE

PROCEEDINGS

03-28-02 Case filed by jang
04-03-02 Judge LINDBERG assigned.
04-03-02 Filed: Motion for Three Day Summons.
04-03-02 Issued: Issue Three Day Summons.
Clerk jang
04-04-02 Filed: Complaint 0-2K
04-04-02 Fee Account created Total Due: 37.00
04-04-02 COMPLAINT 0K-2K Payment Received: 37.00
Note: Code Description: COMPLAINT 0K-2K
04-08-02 Fee Account created Total Due: 60.00
04-08-02 CROSSCLAIM 2K-10K Payment Received: 60.00
Note: Code Description: CROSSCLAIM 2K-10K
04-08-02 Filed: Answer and Cross Complaint
MITCH TOMLINSON

04-10-02 Filed return: Return Three Day Summons.
Party Served: TOMLINSON, MITCH
Service Type: Personal
Service Date: April 03, 2002
04-12-02 Filed: Motion for Summary Judgment and Request for Oral
Argument
04-12-02 Filed: Memorandum in Support of Motion for Summary Judgment
04-12-02 Filed: Affidavit in support of Motion for Summary Judgment
04-12-02 Filed: Notice of Hearing
04-26-02 SUMMARY JUDGMENT MOTION scheduled on April 26, 2002 at 09:30 AM
in Second Floor with Judge VISITING.

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CASE NUMBER 020403375 Eviction

04-26-02 Minute Entry - Minutes for Pretrial Conference
Judge: BRUCE LUBECK
Clerk: Ioris
PRESENT

Plaintiff's Attorney(s): KIRK A CULLIMORE
Audio
Tape Number: 02-141 Tape Count: 1450

HEARING

PARTIES HAVE REACHED STIPULATION. UPON MOTION FROM ATP, COURT
ORDERS HEARING STRICKEN.

05-14-02 Filed: Stipulation.

05-15-02 Filed: Certification of judgment.

05-15-02 Filed: Affidavit of attorney fees.

05-15-02 Filed: Affidavit of breach.

05-15-02 Filed: Motion for an order of restitution.

05-15-02 Note: Submitted to judge to sign judgment and order of
restitution.

05-23-02 Issued: Order of restitution.
Judge VISITING

05-23-02 Case Disposition is Judgment jamiep
Disposition Judge is DENISE P. LINDBERG jamiep

05-23-02 Judgment #1 Entered
Creditor: PINNACLE HIGHLAND
Debtor: MITCH TOMLINSON
6,975.25 Total Judgment
6,975.25 Judgment Grand Total

05-23-02 Filed judgment: Default - Judge
Judge visit
Signed May 21, 2002

06-05-02 Issued: Garnishment

06-05-02 Fee Account created	Total Due:	35.00	
06-05-02 GARNISHMENT	Payment Received:		35.00

Note: Code Description: GARNISHMENT

06-11-02 Filed: Defendant's Request for garnishment hearing.

06-12-02 Filed: Answer of garnishee
MITCH TOMLINSON
75.00
June 10, 2002

06-19-02 Notice - NOTICE for Case 020403375 ID 1330000
GARNISHMENT HEARING is scheduled.
Date: 07/12/2002
Time: 09:30 a.m.
Location: Second Floor
SANDY DISTRICT COURT

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CASE NUMBER 020403375 Eviction

210 West 10000 South
SANDY, UT 84070

Before Judge: VISITING

06-19-02 GARNISHMENT HEARING scheduled on July 12, 2002 at 09:30 AM in
Second Floor with Judge VISITING.

07-09-02 Filed: Motion For Continuance

07-09-02 Filed: Motion To Submit

07-10-02 Filed: Motion to Set Aside Stipulation

07-10-02 Filed: Affidavit of Defendant Mitch Tomlinson

07-10-02 Filed: memorandum in Support of Motion to Set Aside Default
Judgment

07-10-02 Filed: Motion to Set Aside Default Judgment

07-12-02 Minute Entry - Minutes for GARNISHMENT HEARING
Judge: SANDRA PEULER
Clerk: bryanp
PRESENT

Plaintiff's Attorney(s): KIRK A CULLIMORE
Audio
Tape Number: vstj2a Tape Count: 10:00

HEARING

TAPE: vstj2a COUNT: 10:00
Judgment granted against Zions Bank in the amount of \$75.00.
07-16-02 Issued: Garnishee Order
Judge DENISE P. LINDBERG
08-02-02 Filed: MEMORANDUM IN OPPOSITION TO DEFTS MOTION TO SET ASIDE
JUDGMENT
08-14-02 Filed: VERIFIED MOTION FOR EXTENSION OF TIME IN WHICH TO
RESPOND TO PLTFS MEMORANDUM AND REQUEST FOR ORAL ARGUMENTS
08-16-02 Notice - NOTICE for Case 020403375 ID 5353431
MOTION TO SET ASIDE is scheduled.
Date: 10/11/2002
Time: 10:30 a.m.
Location: Second Floor
SANDY DISTRICT COURT
210 West 10000 South
SANDY, UT 84070
Before Judge: VISITING
08-16-02 MOTION TO SET ASIDE scheduled on October 11, 2002 at 10:30 AM
in Second Floor with Judge VISITING.
09-10-02 Filed: Request for Hearing by ATP.
10-03-02 Filed: Amended Memorandum in Support of Motion for Relief from
Order and Request for Attorney's Fees
10-11-02 Minute Entry - Minutes for MOTION TO SET ASIDE JUDGMENT
Judge: DENISE P. LINDBERG

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CASE NUMBER 020403375 Eviction

Clerk: melindab
PRESENT

Defendant(s): MITCH TOMLINSON
Plaintiff's Attorney(s): KIRK A CULLIMORE
Defendant's Attorney(s): MR. GOOBLER
Audio
Tape Number: 02-02VJ Tape Count: 10.30

HEARING

Mr. Goobler addresses court. Judge Asks Questions.
Mr. Cullimore Addresses Court. Judge Burton asks questions.
Mr. Goobler readdresses court.
Mr. Goobler rebuttal.
Defendant's Motion to Set Aside*GRANTED*.
10-11-02 Case Disposition is Set aside/Withdrawn donnas
Disposition Judge is DENISE P. LINDBERG donnas
10-22-02 Filed: Motion to enforce the settlement and request for
hearing.
10-22-02 Filed: Memorandum in Support of Motion to Enforce the
Settlement
10-22-02 Filed: Affidavit in Support of Motion to enforce the Settlement
10-22-02 Filed: Notice of Hearing
10-23-02 MOTION TO ENFORCE SETTLEMEN scheduled on November 08, 2002 at
09:30 AM in Second Floor with Judge VISITING.
11-06-02 Filed: Motion to Continue Hearing and Request for Scheduling
Conference

11-06-02 Filed: Affidavit of Mitch Tomlinson in Support of Motion to Continue
11-08-02 Minute Entry - Minutes for MOTION TO ENFORCE SETTLEMENT
Judge: MICHAEL K. BURTON
Clerk: melindab
PRESENT

Defendant(s): MITCH TOMLINSON
Plaintiff's Attorney(s): KIRK A CULLIMORE
Audio
Tape Number: vj3dc Tape Count: 9.55

HEARING

Court Ordered: Motion to Enforce Settlement Hrg continued to Jan. 10, 2003 at 10:00 a.m. to allow defendant to respond and retain counsel.

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CASE NUMBER 020403375 Eviction

11-08-02 MOTION TO ENFORCE SETTLEMENT scheduled on January 10, 2003 at 10:00 AM in Second Floor with Judge VISITING.
01-10-03 Minute Entry - Minutes for MOTION TO ENFORCE SETTLEMENT
Judge: STEPHEN ROTH
Clerk: loris
PRESENT

Defendant(s): MITCH TOMLINSON
Plaintiff's Attorney(s): LISA MCGARRY
Audio
Tape Number: vjdc 4/02 Tape Count: 11:02

HEARING

TAPE: vjdc 4/02 COUNT: 11:02

Court orders Evidentiary Hearing set for 3/14/03.

01-10-03 Notice - NOTICE for Case 020403375 ID 5481381
EVIDENTIARY HEARING is scheduled.
Date: 03/14/2003
Time: 10:00 a.m.
Location: Second Floor

SANDY DISTRICT COURT
210 West 10000 South
SANDY, UT 84070

Before Judge: VISITING

No tank tops, crop tops, shorts or hats allowed in the courtroom.
Shoes must be worn.

02-21-03 EVIDENTIARY HEARING rescheduled on March 28, 2003 at 10:00 AM
Reason:.

02-26-03 Filed: Notice of Continuance of Evidentiary Hearing

03-28-03 Minute Entry - Minutes for MO. TO ENFORCE SETTLEMENT AG
Judge: MICHAEL K. BURTON
Clerk: lisam
PRESENT

Defendant(s): MITCH TOMLINSON

Plaintiff's Attorney(s): KIRK A CULLIMORE
 Defendant's Attorney(s): DOUG GUBLER
 Audio
 Tape Number: VJDC 4-02 Tape Count: 10:04:38

HEARING

All parties address the Court.

Printed: 08/12/04 15:40:58

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CASE NUMBER 020403375 Eviction

The Court GRANTS motion to enforce settlement agreement
 Judgment to be entered in the amount of \$1342.52.
 Plaintiff to submit judgment.

03-28-03	Fee Account created	Total Due:	0.50	
03-28-03	COPY FEE	Payment Received:	0.50	
03-31-03	Note: RECEIVED: Judgment			
04-09-03	Note: File to judge to sign judgment			
04-09-03	Note: JUDGE BURTON SET ASIDE DEFAULT JUDGMENT ON 10/11/02			
04-09-03	Judgment #1 Modified			
04-15-03	Judgment #2 Entered			
	Creditor: PINNACLE HIGHLAND			
	Debtor: MITCH TOMLINSON			
	1,332.52 Total Judgment			
	1,332.52 Judgment Grand Total			
04-15-03	Filed judgment: Default - Judge			
	Judge visit			
	Signed April 14, 2003			
04-15-03	Case Disposition is Judgment			
	Disposition Judge is DENISE P. LINDBERG			
04-21-03	Issued: Writ of Execution			
04-21-03	Fee Account created	Total Due:	35.00	
04-21-03	WRIT OF EXECUTION	Payment Received:	35.00	
	Note: Code Description: WRIT OF EXECUTION			
04-23-03	Filed: NOTICE OF APPEAL BY MITCH TOMLINSON.			
04-24-03	Note: CERTIFIED NOTICE OF APPEAL MAILED TO THE SUPREME COURT.			
04-24-03	Issued: Supplemental Order			
	Clerk steps			
04-24-03	Issued: Abstract of Judgment			
	Clerk steps			
05-07-03	Filed: LETTER FROM THE UTAH COURT OF APPEALS THE CASE NUMBER IS 20030386-SC			
05-14-03	Fee Account created	Total Due:	20.00	
05-14-03	AUDIO TAPE COPY	Payment Received:	20.00	
05-19-03	Note: Tape count should be 1450 not 1480 from hearing on 4/26/02. Clerk entered the correct tape count on this date.			
10-07-03	Filed: LETTER FROM THE SUPREME COURT THIS MATTER IS TRANSFERRED TO THE UTAH COURT OF APPEALS.			
10-08-03	Filed: LETTER FROM THE UTAH COURT OF APPEALS THE CASE NUMBER WILL REMAIN THE SAME.			
10-21-03	Filed: Request for Transcript			
03-09-04	Notice - NOTICE for Case 020403375 ID 5881108			
	we are unable to enter the default judgment/certificate in this case for the following reasons:			

See reason below

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CASE NUMBER 020403375 Eviction

Dated this ____ day of _____, 20____.

District Court Clerk

03-09-04 Notice - NOTICE for Case 020403375 ID 5881111
We are unable to enter the default judgment/certificate in this case for the following reasons:

See reason below

Notes: CASE IS ON APPEAL TO THE UTAH SUPREME COURT.

Dated this ____ day of _____, 20____.

District Court Clerk

03-22-04 Filed: Motion for Entry of Default Judgment
03-22-04 Filed: Memorandum of Points and Authority in support of Motion for Entry of Default Judgment.
03-22-04 Filed: Affidavit of Defendant in Support of Default Certificate.
03-25-04 Filed: Answer to cross complaint by ATP Kirk Cullimore
PINNACLE HIGHLAND
04-13-04 Minute Entry - MINUTE ENTRY
Judge: DENISE P. LINDBERG
Clerk: vickielc
The above matter comes before the Court on Mitch Tomlinson's, defendant and counterplaintiff, motion for default judgment on his counterclaims. The present case is on appeal to the Utah Court of Appeals, therefore, this Court lacks jurisdiction to decide the present motion.
04-23-04 Filed: Transcript of hearing dated 3-28-03, Transcribed by Heidi Hunter, freelance court reporter
06-18-04 Fee Account created Total Due: 2.50
06-18-04 COPY FEE Payment Received: 2.50

Printed: 08/12/04 15:41:00

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